IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11841 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANI MOHMAD FAKIRBHAI VORA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11841 of 2000

MR KB PANDE for Petitioner No. 1

MR PB ABICHANDANI, AGP, for Respondent No. 1

NOTICE SERVED BY DS for Respondents No. 2-4

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 18/12/2001

ORAL JUDGEMENT

The petitioner, who is a Sub-Inspector of Police, has approached this court with a prayer that charge-sheet

dated 31.8.1999 (Annexure A) issued to him should be quashed and set aside.

2. The facts giving rise to the present petition, in a nutshell, are as under :

3. On 4.3.1997, near Tarsali Cross Road Junction on the Vadodara Bypass Highway, an amount of Rs. 500 was demanded by some persons by way of bribe from a truck driver, who was driving from Ahmedabad to Bombay. As the amount of bribe was not paid by the concerned driver, the driver was beaten by the persons, who were possibly from the police force. In the circumstances, a criminal case was filed and in the said criminal case, the petitioner was one of the accused. In pursuance of an application given under the provisions of sec. 227 of the Code of Criminal Procedure, the court had discharged the petitioner-accused of the charges levelled against him and the said order of discharge was confirmed by this court in Criminal Revision Application No. 426/99. Though the petitioner was duly discharged under sec. 227 of the Cr.P.C., the respondent authorities decided to initiate departmental proceedings against the petitioner. Upon perusal of the charge-sheet dated 31.8.99, which is at Annexure A to the petition, it appears that the petitioner was negligent in performance of his duties and, therefore, inquiry proceedings have been initiated against the petitioner and the said proceedings are still pending.

4. Learned advocate Shri Pande appearing for the petitioner has submitted that the departmental proceedings initiated against the petitioner should be quashed and set aside because they are based on the same incident, which had taken place in the criminal case referred to hereinabove. As the petitioner has been discharged in the criminal case, according to the learned advocate, it is not open to the respondent authorities to initiate departmental proceedings.

5. It has been also submitted by him that the documents demanded by the petitioner have not been supplied to him and, therefore, the proceedings are not being conducted in a just and proper manner.

6. Thereafter the learned advocate has submitted that much delay has been caused in conducting the departmental proceedings because, though the charge-sheet was given to the petitioner somewhere in Sept. 1999, till today the inquiry proceedings have not been completed. He has therefore submitted that on the ground

of delay also the proceedings deserved to be quashed.

7. So as to substantiate the arguments made hereinabove, learned advocate Shri Pande has relied upon judgment delivered in the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr., AIR 1990 SC 1416.

8. On the other hand, learned AGP Shri Abichandani has relied upon the affidavit-in-reply filed by Shri V.S. Shinde, Asst. Commissioner of Police, Control Room, Baroda and has submitted that at this stage the charge-sheet given to the petitioner in the departmental inquiry proceedings should not be quashed. It has been submitted by him that burden of proof in criminal case as well as in the departmental proceedings is bound to be different. According to him, in the instant case, as the charges levelled against the petitioner in the criminal case as well as in the departrmental proceedings are absolutely different and, therefore, the petitioner cannot be granted the prayer.

9. It has been thereafter submitted by the learned AGP that copies of all documents, which are to be relied upon in the inquiry proceedings, have already been given to the petitioner. He has further submitted that if any document on which the respondent authorities are to rely upon while proceeding with the departmental proceedings, copies of all such documents shall be given to the petitioner as soon as possible and he has also assured this court that no document, a copy of which has not been given to the petitioner, shall be relied upon by the respondent authorities in the departmental proceedings.

10. So far as the delay is concerned, it has been very fairly submitted by the learned AGP that some delay has been caused, but he has assured the court that all possible efforts would be made to see that the inquiry proceedings are completed as soon as possible, if the petitioner extends his co-operation to the concerned authority.

11. I have heard the learned advocates at length and have also perused the relevant record pertaining to the case including a copy of the charge-sheet, which was filed in Special Case No. 5/99 in the Sessions Court, Baroda.

12. Upon perusal of the charge-sheet filed in the criminal case, it is clear that the petitioner was charged for committing offences under the provisions of sections 323, 325, 201, 217, 384, 511 of the I.P.C. and

under the provisions of sec. 7 of the Prevention of Corruption Act. Upon perusal of the charge-sheet issued to the petitioner in the departmental proceedings, it is very clear that it has been alleged that the petitioner did not perform his duties scrupulously and he had shown negligence in performance of his duties. Thus, it is very clear that the nature of charges levelled against the petitoner in the departmental proceedings is absolutely different.

13. Upon perusal of the judgments and orders relied upon by learned advocate Shri Pande, it is very clear that on account of certain technical defects and because of not obtaining necessary sanction under the provisions of the Prevention of Corruption Act, the petitioner was discharged and the order of discharge was confirmed by the High Court.

14. So far as the demand of the petitioner with regard to getting copies of documents is concerned, in view of the statement made by learned AGP Shri Abichandani that no document shall be relied upon in the inquiry proceedings if a copy of the said document is not given to the petitioner, I need not deal with the said argument advanced by the learned advocate for the petitioner.

15. So far as the aspect of delay is concerned, in my opinion, it would be just and proper if the respondent authorities are directed to conclude the departmental proceedings as soon as possible and preferably before 28th February 2002. Learned advocate Shri Pande has fairly submitted that the petitioner, who has already extended his full co-operation to the respondent authorities, shall continue to extend his co-operation so that the inquiry proceedings can be concluded as soon as possible.

16. So far as the judgment delivered in the case of Capt. M. Paul Anthony, v. Bharat Gold Mines Ltd & anr., AIR 1999 SC 1416 is concerned, in my opinion, the said judgment would not help the petitioenr for the reason that in the said case the departmental proceedings had been over. The court had an opportunity to peruse evidence adduced in criminal case as well as in the departmental proceedings. In the instant case, still the departmental proceedings are not over and it is not known as to what sort of evidence is to be adduced before the concerned authority. It is not even known whether the petitioner is to be found guilty of the charges levelled against him. There are all chances that upon perusal of

the evidence which might be led by the petitioner, the proceedings might be terminated in his favour. In the circumstances, in my opinion, the judgment referred to hereinabove will not help the petitioner.

18. For the reasons stated hereinabove, I am not inclined to interfere with the departmental proceedings initiated against the petitioner. It is, however, directed that the departmental proceedings shall be completed as soon as possible and preferably before 28th February 2001.

The petition stands disposed of as rejected. Notice is discharged.

(A.R. Dave, J.)

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